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09/823,376	03/30/2001	George H. Butcher III	006878-111401	5338

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EXAMINER	
BORLINGHAUS, JASON M	
ART UNIT	**PAPER NUMBER**
3693	

NOTIFICATION DATE	DELIVERY MODE
05/15/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	09/823,376	BUTCHER, GEORGE H.	
	Examiner	Art Unit	
	JASON M. BORLINGHAUS	3693	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 March 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *15,17-22 and 25-33* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *15,17-22 and 25-33* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 15, 17 – 22 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grigsby (PG Pub 2002/0016758) in view of Bachmann (US Patent 6,315,196) and Paulson (Paulson, Ed. *The Complete Idiot's Guide to Buying & Selling a Business. Alpha Books*. 1999. pp. 75 – 76).

Regarding Claim 15, Grigsby discloses a method implemented by a programmed computer system comprising:

- receiving with the computer system data regarding the expected payment date (repayment schedule) for a bond issued by a bond issuer, wherein the bond has a repayment obligation and an underlying revenue stream (property taxes or sales taxes). (see abstract; para. 3; para. 13; para. 61);

- receiving with the computer system data regarding a legal maturity date (maturity date) for the bond. (see para 8);
- receiving with the computer system data regarding a requirement that the bond issuer establish revenue rates (projected revenue) expected to be sufficient to pay the repayment obligation (bond) by the expected payment date. (see para. 61);
- receiving with the computer system data regarding the underlying revenue stream (revenue streams) associated with the bond. (see para. 61);
- determining within the computer system, based at least upon the data regarding the expected payment date and the data regarding the underlying revenue stream, if the repayment obligation will be met by the expected payment date (such as when the obligation will not be met when the revenue stream produces "low or uncertain revenues."). (see para. 61); and
- meeting the repayment obligation by the expected payment date (repayment schedule) to the extent that the determining step determines that the repayment obligation will be met by the expected payment date (such as the individual dates on said repayment schedule). (see para. 13).

Grisby does not teach a method comprising establishing a revenue requirement based on a first coverage ratio; making the payment of the repayment obligation at a deferral date as late as the legal maturity date to the extent that the repayment obligation is not met by the expected payment date due to the failure of the revenue

stream of the bond to cover the requirements of the repayment obligation; nor wherein the first coverage ratio is greater than 1 and up to 1.20.

Paulson discloses a method comprising a revenue requirement (EBIT) based on a first coverage ratio; and wherein the first coverage ratio is greater than 1. (see p. 75 – 76).

Bachman discloses a method comprising making the payment of the repayment obligation (debt of a credit account) at a deferral date as late as the legal maturity date (maximum benefit duration date) to the extent that the repayment obligation (debt) is not met (unpaid) by the expected payment date (minimum payment due date) due to the failure of the revenue stream such as to cover the requirements of the repayment obligation (unable to make timely payments, such as due to unemployment). (see abstract);

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Grigsby and Paulson by incorporating coverage ratios greater than one, as disclosed by Paulson, as a coverage ratio is one "then it means that this company is barely making its loan interest payments." (see p. 76).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Grigsby and Paulson by incorporating a method of deferment for repayment of the debt obligation, as disclosed by Bachman, if parties were unable to meet the repayment obligations under the bond due to insufficient revenue streams, providing parties an further opportunity to repay.

Regarding Claims 17 - 18, Grisby discloses a method wherein the revenue stream flows from a project selected from the group consisting of an airport project (airports) and sewer project (water works). (see para. 61).

Grisby does not teach a method wherein the failure of the revenue stream to cover the requirements of the repayment obligation results from a force majure event.

Bachman discloses a method wherein the failure of the revenue stream to cover the requirements of the repayment obligation results from a force majure event (hospitalization, unemployment, disability). (see abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Grigsby, Paulson and Bachman by incorporating a force majure event, as disclosed by Bachman, as force majure events may prevent a debtor from meeting repayment obligations.

Regarding Claims 19 – 20, Grisby discloses a method wherein the requirement that the bond issuer establish revenue rates expected to be sufficient to pay the repayment obligation by the expected payment date further comprises the requirement that the bond issuer establish revenue dates expected to be sufficient to pay the repayment obligation date and legally payable debt service. (see para. 61).

Grisby does not teach a method wherein the deferral of the payment of the repayment obligation occurs upon the occurrence of a determinable event.

Bachman discloses a method wherein the deferral of the payment of the repayment obligation occurs upon the occurrence of a determinable (verifiable) event. (see abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Grigsby, Paulson and Bachman by incorporating a determinable event, as disclosed by Bachman, thereby making the event which necessitates deferral of repayment obligations verifiable to all parties.

Regarding Claims 21 – 22, Grisby discloses a method wherein the requirement that the bond issuer establish revenue rates expected to be sufficient to pay the repayment obligation by the expected payment date. (see para. 61).

Grisby does not teach a method wherein the determinable event is the existence of a shortfall between (i) the sum of the repayment obligation and legally payable debt service and (ii) revenues raised by the revenue rates established by the bond issuer; and the revenue rates are a continuing requirement even if the repayment obligation is deferred.

Bachman discloses a method wherein: the determinable event is the existence of a shortfall between (i) the sum of the repayment obligation and legally payable debt service (debt on a credit account) and (ii) revenues raised by the revenue rates established by the bond issuer (zero revenue due to unemployment). (see abstract).

While neither Grisby nor Bachman explicitly disclose a method wherein the revenue rates are a continuing requirement even if the repayment obligation is deferred, such is implied. Bachman discloses a deferral of repayment obligations tied to a debt account. Deferral of repayment obligations means a postponement of repayment obligations not the extinguishing of the repayment obligations. If repayment obligations are deferred then the repayment obligations continue even though payment is deferred.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Grigsby, Paulson and Bachman by incorporating a quantifiable metric, as disclosed by Bachman, thereby defining the metric allowing for deferral of repayment obligations.

Regarding Claim 25, Grisby discloses a method wherein the bond is issued as part of a pool of bonds. (see para. 54).

Claims 26 - 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grigsby, Bachman and Paulson, as applied to Claim 15 above, and further in view of ***Official Notice***.

Regarding Claims 26 – 33, Grisby does not teach a method wherein the bond is associated with a state revolving fund program; additional interest on a principal portion or interest portion of the repayment obligation that is not met continues to accrue until the repayment obligation is met; an increase in the interest rate following an inability to pay a debt by the expected payment date; and a revenue stream is a net revenue stream.

Examiner takes ***Official Notice*** that a state revolving fund program; accruing interest on an unpaid principal portion or unpaid interest of the repayment obligation that is not met continues to accrue until the repayment obligation is met, such as compound interest; increasing the interest rate following an inability to pay a debt by the expected payment date; and usage of a net revenue stream for debt calculations are old and well known in the art of financial management and debt servicing.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Grigsby, Bachman and Paulson by incorporating methodologies, as are old and well known in the art, as such methodologies are standard and conventional in the art of financial management and debt servicing.

Response to Arguments

Applicant's arguments filed 3/02/09 have been fully considered but they are not persuasive

§ 112 Rejection

Examiner hereby rescinds the prior asserted § 112, 2nd paragraph, rejection. As noted by the Applicant, the first coverage ratio is adequately defined as being "greater than 1 and up to 1.20."

However, while the claim language does not rise to the level of a § 112, 2nd paragraph, rejection, the claim does possess extremely broad claim language. Claim 15 states:

> wherein the requirement that the bond issuer establish revenue rates expected to be sufficient to pay the repayment obligation by the expected payment date comprises establishing a revenue requirement based on: a first coverage ratio that is lower than: (i) a second coverage ratio that is used for purposes of a board policy associated with the bond; or (ii) a third coverage ratio that is used for purposes of a rate covenant associated with the bond.

The first coverage ratio is defined as being between 1 and 1.20. The first coverage ratio is then being utilized to define a second coverage ratio and the third coverage ratio, as one of these two additional ratios must be greater than 1.20. Outside

of stating that these ratios are greater than 1.20, these two ratios are basically reduced to the level of non-functional descriptive data. This is because these ratios are not functionally involved in the steps recited nor are they referenced again in the claims. The claimed steps would be performed the same regardless of the data. *see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); In re Ngai, F. 3d, 2004 WL 1068957 (Fed. Cir. May 13, 2004).*

Furthermore, these two additional coverage ratios are being defined based upon their intended use and/or purpose, rather than their intrinsic qualities. The recitation of the intended use or purpose of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use or fulfilling said purpose, then it meets the claim. *Ex parte Masham, 2 USPQ2d 1647 (1987).*

For example, the claim language is so broad, that the coverage ratio of three disclosed by Paulson reads on the "a second coverage ratio that is used for purposes of a board policy associated with the bond."

Paulson Reference

Applicant asserts that Paulson does not teach nor suggest "a coverage ratio greater than 1 and up to 1.20". Additionally, as Paulson states an example in which

"maintaining a coverage ration of 3 is considered a solid minimum...", Applicant asserts that Paulson actually teaches away from a coverage ratio between 1 and 1.20.

Paulson states:

> Assume that company has an EBIT of $60,000 and that this same company paid $20,000 in total interest on its debts. These numbers mean that the company has a coverage ratio of $60,000/$20,000 = 3. Is this ratio result too small, too large, or just right? That answer is always a matter of personal investment style and perspective, but maintaining a coverage ratio of 3 is considered a solid minimum. This means that EBIT can drop by two thirds, and the company can still cover the interest on its debts. If the EBIT drops by more than two thirds, the company might default on its loan interest payments causing the entire company to potentially go into default.
>
> ***This single ratio by itself does not completely define, but if this ratio is 1, then it means that this company is barely making its loan interest payments, and any serious downturn in EBIT could put the company in a shaky financial position.*** (emphasis added – see p. 76).

Paulson discloses that the coverage ratio has to be, at least, 1 in order for the borrower to make a payment on a bond, although just barely. Obviously, the higher the coverage ratio, the greater protection provided to the lender that the borrower will not default. Therefore, a lender may require a higher minimum, such as a coverage ratio of 3, thereby providing themselves with a financial cushion. However, this is different than teaching away from a coverage ratio of 1, as disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or non-preferred embodiments. *In re Susi, 169 USPQ 423, 426 (CCPA 1971).*

Official Notice

The Examiner would like to point out that Official Notice statement(s) were used in the office action mailed on 9/02/08 to indicate that certain concept(s), technology(s) and/or methodology(s) are old and well known in the art. Per MPEP 2144.03(c), since applicant has not attempted to traverse such Official Notice statement(s), Examiner is taking the asserted common knowledge and/or well-known statement to be admitted prior art.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON M. BORLINGHAUS whose telephone number is (571)272-6924. The examiner can normally be reached on Monday - Friday; 9am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James A. Kramer can be reached on (571)272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jason M Borlinghaus/
Examiner, Art Unit 3693
May 10, 2009